

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

LYNDA JACKSON

Petitioner.

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) CHARGE NO.: 2008SA3376
) EEOC NO.: 21BA82117
) ALS NO.: 10-0142
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ORDER

This matter coming before the Commission by a panel of two, Commissioners Rozanne Ronen and Nabi Fakroddin presiding, upon Lynda Jackson's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008SA3376; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On May 21, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Urbana School District #116 ("Employer") denied her a promotion because of her race, Black (Count A), age, 58 (Count B), and disability, nerve disorder of left hand and fingers (Count C), and subjected her to unequal terms and conditions of employment because of her race (Count D), age (Count E), and disability (Count F), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On January 21, 2010, the DHR dismissed the Petitioner's charge for Lack of Substantial Evidence. The Petitioner filed this timely Request on February 22, 2010.
2. The Petitioner was hired by the Employer in 1999. During the time alleged in the charge the Petitioner was a part-time office clerk.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. In effect during the Petitioner's employment was a Union Agreement between Urbana Education (Certified) Association, IEA-NEA and Urbana School District # 116 Board of Education for 2007-2010 ("Agreement"). The Agreement set forth the policy for employees seeking to apply for job promotions or transfers. Pursuant to the Agreement, any employee desiring a job transfer was required to submit a written application to the Employer's Human Resources Director.
4. On August 13, 2007, the Petitioner signed an employment contract with the Employer entitled "Employment Statement for School Year 2007-2008." Pursuant to the employment contract, the Petitioner was hired into the position of office clerk for six hours per day for 210 days.
5. In winter 2007, the Assistant Superintendent of Human Resources told the Petitioner and other employees that the Employer was creating a new part-time position for a fingerprinter. The Petitioner verbally expressed interest in the position.
6. On February 20, 2008, the Employer posted notice of a position called "Clerical Position." The notice stated the duties included assisting with fingerprinting. The notice stated the start date was March 4, 2008, and the application deadline was March 1, 2008.
7. The Petitioner did not submit a written application for the Clerical Position. Two written applications for the Clerical Position were submitted to the Human Resources Director. One of those applicants was selected on March 3, 2008.
8. Soon thereafter, the Petitioner filed the instant charge of discrimination against the Employer. In Counts A through C of the charge, the Petitioner alleged the Employer denied her a promotion to the Clerical Position because of her race, her age, and her disability. In Counts D through F of the charge, the Petitioner alleged that from February 28, 2008, through March 28, 2008, the Employer subjected her to unequal terms and conditions of employment when the Employer failed to provide her with: **1)** a name plate; **2)** access to the internet; **3)** a telephone; and **4)** refused to allow her to work more than six hours per day.

9. In the Petitioner's Request, the Petitioner argues that various facts in the Respondent's investigation report are inaccurate or are misrepresented by the Respondent's investigator. Further, the Petitioner contends she does contest the facts that the Respondent's investigator identifies as "uncontested facts" in the investigation report.
10. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for lack of substantial evidence. As to Counts A, B, and C, the Respondent argues the Petitioner never applied for the Clerical Position in accordance with the Agreement. As to Counts D, E, and F, the Respondent argues the Petitioner failed to establish a *prima facie* case of discrimination because she failed to show she had been subjected to an adverse action. Further, the Respondent argues the Petitioner was limited to working six hours per day pursuant to the employment contract the Petitioner signed with the Employer on August 13, 2007.

CONCLUSION

The Commission concludes the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

Counts A, B, and C: Failure to Promote

The Commission concludes that the Respondent properly dismissed Counts A, B, and C of the Petitioner's charge for lack of substantial evidence. The Petitioner's claims fail because there is no evidence the Petitioner ever submitted a written application for the Clerical Position. One element of the *prima facie* case for a failure to promote claim is that the complainant must have applied for the position. See In The Matter of Hilton and Schnuck's Market, Inc., IHRC, Charge No. 1989SF0475, 1994 WL 843715 (February 4, 1994). The Petitioner's verbal indication that she was interested in the

position did not, pursuant to the Agreement, constitute an application for the position. Therefore, Counts A-C were properly dismissed for lack of substantial evidence.

Counts D, E, and F: Different Terms and Conditions of Employment

The Commission concludes Counts D through F of the charge were properly dismissed for lack of substantial evidence. In order to establish a *prima facie* case of discrimination, the Petitioner must show: **(1)** that she falls within a protected class; **(2)** that she was performing his job satisfactorily; **(3)** that she was subjected to an adverse action; and **(4)** that the Employer treated similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

An adverse action must be sufficiently severe or pervasive to constitute a term or condition of employment, otherwise it does not give rise to a cause of action under the Act. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365, 1999 WL 33252975 (October 4, 1999). Further a materially adverse change in the terms and conditions of employment must be more disruptive than a mere inconvenience or an insignificant alteration of job duties. See In the Matter of Martha Canady and Caterpillar, Inc., IHRC, Charge No. 1994SA0027 1998 WL 253804, (March 17, 1998).

The Petitioner alleged she was subjected to different terms and conditions of employment when the Employer failed to provide her with: **1)** a name plate; **2)** access to the internet; **3)** a telephone in her office; and **4)** refused to allow her to work more than six hours a day. The Petitioner contended her internet access was "turned off" in February 2008. The Petitioner had access to a phone in her general work area, but not at her desk. Accepting all of these allegations as true, there is no evidence the Petitioner suffered these inconveniences because of her race, age, or disability. Furthermore, there is no substantial evidence that the Petitioner's temporary lack of internet, lack of a phone at her desk, and lack of a name plate caused a significant alteration in the Petitioner's job duties.

As to the Petitioner's contention that she was not permitted to work more than six hours per day, the Petitioner's employment contract with the Employer, which the Petitioner signed on August 13, 2007, provided the Petitioner with six hours of work per day for 210 days. There is no evidence the Petitioner was entitled to work more hours than the contract provided, nor that similarly situated employees outside the Petitioner's protected classes were treated more favorably. Therefore, Counts D-F were properly dismissed for lack of substantial evidence.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and, Urbana School District #116 as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 13th day of October 2010.

Commissioner Rozanne Ronen

Commissioner Nabi Fakroddin